the structure of society and the conditions of life in general, it seems perfectly clear that the State has complete authority to regulate the transmission of property after the owner's death. The only grain of truth in the proposition that inheritance is a "necessary incident" of property or, as is sometime said, "a common law incident," seems to be this. It is necessary to the idea of private property that there be a succession of some kind on the death of the owner. Who shall succeed is quite a different question, and has been answered differently at different times and places. Private succession we have had for centuries, but it is no more a consequence of the conception of property than is transferability *inter vivos*.

It is hardly necessary to say that property is here used in the sense of general property, applying therefore only to the fee of land and the general *dominium* of chattels. It is no argument in favor of the proposition we have been supporting to cite the case of the occupant of an estate *pur autre vie*, 8 H. L. R. 167 (Nov., 1894).

The case of *Minot* v. *Winthrop* is further interesting from the fact that it introduces into Massachusetts a new commodity. In order to uphold the statute it is necessary to bring the right of succession under the head of "commodities" in the Constitution. This the Supreme Court does, though not without flinching. It has been held that a corporate franchise is a commodity. It is difficult to see, then, why the exercise of any private right is not one also. Having once departed from the economic conception of commodity, the court has only to be consistent with itself. In *Gleason* v. *McKay*, 134 Mass. 419, it was held that a partnership with shares transferable without the special assent of the members was not a commodity. It is difficult to distinguish that case from this, and Lathrop J., in his dissenting opinion, finds it impossible to do so. The majority of the court, however, think that *Gleason* v. *McKay* really decided nothing more than that it was unconstitutional to impose a tax on that particular kind of partnership alone, such a restriction being unreasonable. If the case decided no more than that, the court at the time certainly thought it was going further. Nothing is said about the reasonableness of the tax in the report of *Gleason* v. *McKay*. A similar interesting case in another State is *State of Maine* v. *Hamlin*, 30 Atl. R. 76.

STRIKE INJUNCTIONS. — The reports recently printed of the cases ensuing upon the injunctions issued against the strike leaders of last July afford an opportunity of considering the legal side of the trouble, — a side not frequently discussed. There are, first, a few cases which have endeavored to compel specific performance of their contracts on the part of the striking employees, *S. California R. R.* v. *Rutherford*, 62 Fed. Rep. 796, compelling the hauling of Pullman cars as long as the employees worked for the company at all, and a case of last December which enjoined employees from quitting work on a road in the hands of the court's receiver, *Farmer's L. & T. Co.* v. *N. P. R. R. Co.*, 60 Fed. Rep. 803; but the latter case has been overruled in the Circuit Court (Chicago Law Journal, Vol. V. N. S. p. 461). It must be allowed as settled that these cases are wrong, and there has been little or no attempt to infringe upon the rule that no specific performance can be compelled in a contract for personal service, however great the value of the service may be. This is admitted in all the other cases which have been decided, and though it is

hard to see reason why equity should not in proper cases interfere, it must be taken to be the undoubted law. It may perhaps be added that the practical value of a compelled personal service would in most cases hardly justify its enforcement.

The injunction really possible and quite effective was of a different kind, however; it was in restraint of what when committed would have been a tort, — a conspiracy to induce the employees of a railroad yet in its service to withdraw. What a conspiracy precisely is no one knows. Its definition is always question-begging, and the only intelligible meaning of it seems to be that there is an indefinite class of offences which become conspiracies because several combine in their execution, and so render opposition by an individual more difficult; Mr. Justice Harlan in *Arthur* v. *Oakes*, Chic. Law J., Oct. 1894, and Lord Esher in *Temperton* v. *Russell*, 1893, 1 Q. B. 715. There is, however, no occasion in these cases to deal with so misty an offence as conspiracy. Taft, J, in *Thompson* v. *C., N. O., & T. P. R. R. Co.*, 62 Fed. Rep. 803, puts the issue of injunctions upon the right ground in referring them to the law recognized first in *Temperton* v. *Russell, supra*, and, though not altogether settled, at least familiar to lawyers. If it be a tort which a common law court will recognize to induce another not to enter into, or, as here, not to continue, a contract with the plaintiff from motives other than those which the law will admit to be proper, it is no great step to enjoin one from the proposed commission of such a tort. Doubtless the precise definition of the motive which in these cases renders a defendant liable is as yet very far to seek; but there can be little doubt that, whatever it is, that which dictates a "boycott" of the extent of that of last July is quite within its scope. In Judge Grosscup's charge to the grand jury (62 Fed. Rep. 828) the difficulty is dealt with, — of course now in connection with indictments, — and a large scope is left for innocent motive by requiring only that a leader of strikes mean the welfare of the members of his association. Whether that be the right line or not, the purpose in the cases in question was to benefit persons quite disconnected with those who conspired, and to compel the companies altogether to give up their business. Of course, when threats and violence were used, there could be no doubt of the illegality of the conspiracy.

The injunctions issued pursuant to the Act of July 2, 1890, which gave Federal courts power to enjoin against any interference in restraint of interstate commerce or the passage of the mails, (*U. S.* v. *Elliott*, 62 Fed. Rep. 801; *U. S.* v. *Agler*, 62 Fed. Rep. 824,) stand quite alone, and do not call for comment.

Last comes the "omnibus injunction" issued against the world at large by Grosscup and Woods, JJ. It is difficult to see how such injunctions can stand the test of precedent or principle. An injunction issues in a civil suit against a party who has been complained of at least, and has had notice of the motion of his adversary. To be obliged to wait until the injunction is violated to determine against whom it was issued ought to be enough to show that it is not an injunction at all, but in the nature of a police proclamation, putting the community in general under peril of contempt if the proclamation be disobeyed. Courts of equity were evidently not intended to possess such functions, and it must be regretted that Judge Grosscup, in his most commendable eagerness to offset the criminal inaction of Governor Altgeld, should have been forced to such a legal anomaly. The power of a court to imprison for contempt

of its orders or of the persons of its judges is an arbitrary one at best, and to stretch it, as here, in a time of disorders and almost panic in the immediate vicinity, would seem to show that the court has been deserted by the calm judicial temper which should always characterize its proceedings. Some words of Sir George Jessel are much in point in this connection. "It seems to me," he said, "that this jurisdiction of committing for contempt, being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of judges to see whether there is no other mode which is not open to the objection of arbitrariness and can be brought to bear on the subject. . . . I have always thought that, necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, — that is, if no other remedy can be found."

RECENT CASES.

AGENCY — IMPLIED NOTICE. — Plaintiff intrusted money to M. to deposit in defendant's bank, expecting to receive as security either M.'s personal check or the defendant's check indorsed by M. But M. deposited the money to his own credit and received for it bankers' checks payable to himself, representing that he was plaintiff's partner, and proposed to use the checks as memoranda in making a settlement. M. indorsed the checks to plaintiff, who received them in the idea that they represented deposits made according to agreement. Subsequently, M. appropriated the money to his own use. *Held*, that plaintiff was chargeable with knowledge of the acts of M. as his agent, and could not recover. *Henry* v. *Allen*, 28 N. Y. Supp. 242, Bradley, J. *dissenting*.

The hardship engendered in this case by a strict application of the rule imputing to the principal the knowledge of the agent is obvious; and while the opinion of the court may be correct, it would seem that the reasoning of the minority leads to a more equitable result. The text writers, whose words are cited to sustain the opinion of the majority, are referring to implied notice in its application to the rights of a third party as plaintiff, and the quotations therefore are not directly in point. It has become firmly grafted to the general rule of implied notice in other jurisdictions, that such notice will not be presumed where the agent is doing an independent fraudulent act. This has received ample confirmation in Massachusetts. *Innerarity* v. *Bank*, 139 Mass. 332; *Allen* v. *R'y Co.*, 150 Mass. 206. The amount involved in the main case is sufficient to justify re-argument, and an authoritative statement from the Court of Appeals, determining the extent to which fraud on the part of the agent affects the doctrine of implied notice, will be awaited with interest.

BILLS AND NOTES — ACTION BEGUN ON LAST DAY OF GRACE. — This was an action by the holder against the acceptor. On the last day of grace the bill was presented at the bank, where by the acceptance it was made payable, and at a later hour on the same day plaintiff issued the writ in this action. *Held*, that the holder cannot sue the acceptor until the expiration of the last day of grace, although he could treat this as a dishonor and give notice to the drawer or indorser. *Kennedy* v. *Thomas*, L. R. [1894] 2 Q. B. 759.

The English Court of Appeal professes to follow certain cases in this holding, — *Wells* v. *Giles*, 2 Gale, 209, and *Leftley* v. *Wills*, 4 T. R. 170, — and neither of these necessarily stands for this view. In *Wells* v. *Giles* it does not appear that there was any demand at all, so the case could well stand on that. In *Leftley* v. *Wills* Lord Kenyon does rest the case on this ground, — *i. e.* that the acceptor has the whole of the last day in which to discharge the obligation; but, as Buller, J. shows, the case might well have been decided as it was, on the ground that the demand was not made at a reasonable time, — within business hours. It seems, therefore, that the court was not bound by authority, and that, on principle, the view adopted by the court is erroneous. The custom of merchants is that the holder shall determine reasonably at